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90-1797

FILED
MAY 21 1991
OFFICE OF THE CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

RE: EARLENE POLYAK

EARLENE POLYAK — Petitioner

v

WILLIAM BOSTON AND
BOSTON BATES & HOLT — Respondent

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan
(313) 676-3364
- and -
4063 Hood Road
Palm Beach Gardens
Florida 33410
(407) 627-3564

56

QUESTIONS PRESENTED

1.Is the repeated scheduling of pretrial conferences and dismissals of complaints in demand for relief in jury trial and failure to rescue on belief of bias by party in District Court, conflict of interest and abuse of discretion, and denial of due process in the deprivation of constitutional possessed rights and interests, use, and dispose, and exclusion fromthese properties provided in the Fifth Seventh and Fourtments?

2.Should the District Court rescue on timely and proper Motion to Rescue grounded in belief that Judge is biased to another lawyer, and prejudiced to party pursuant to 28 U.S.C. 144?

3. Is the dismissal of all appeals in DOCKET CONTROL in Court of Appeals denial of due process and jurisdiction for Writ?

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Wolfe v State of N.C. 16
80 S Ct 1482 Led 8(1960

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

RE: EARLENE POLYAK

EARLENE POLYAK — Petitioner

v

WILLIAM BOSTON AND
BPSTON BATES & HOLT — Respondent

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

Petitioner prays that writ of certiorari issue from this Supreme Court to review the affirming by the United States Court of Appeals in abuse of discretion, in conflict of interest and failure to rescue by Honorable Thomas A. Higgins pursuant to 28 U.S.C.144, and the denial of due process in the denial of relief in damages in jury trial, in "taking"of constitutional possessed right and interest, use, and dispose, and the exclusion from these constitutional possessed right and interests , provided in the Fifth, Fourteenth Amendments.

OPINIONS BELOW

The opinions of the United States Court of Appeals are set forth in Appendix A. The opinions of the united States District Court are set forth in Appendix B.And pertinent opinions to this cause are set forth in the Appendix C.

JURISDICTION

The order denying petition for rehearing was entered on February 21, 1990, and this petition for writ of certiorati is timely within ninety days thereof.

The jurisdiction of this Court is invoked in the constitution Article III S c. 2, in whichthe judicial power of thie Supreme Court extends to all cases of law and equity, between state and citizens of another state, and between citizens of different states.

The jurisdiction is invoked in 28 U.S.C. 2101; 2443(1)&(2); 42 U.S.C. 1981,1982, and 1983; And Fifth,Seventh and Fourteenth Amendments to United States Constitution.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment is as follows:

> No..person shall be deprived of life, liberty or property, w thout due process of Law; nor shall private property be taken for public use without just compensation.

U.S. Const. Amend.V.

The pertinent portion of the Seventh Amendment provide as follows:

> ...where the value of controversey shall exceed twenty dollars, the right of a jury trial shall be preserved.

U.S. Const. Amend VII.

The pertinent portion of the Eight Amendment provides as follows:

> ...nor excessive fines imposed, nor cruel and unusual punishment inflicted.

U.S. Const. VIII.

The pertinent portion of the Fourteenth Amendment provides as follows:

> No State shall make or enforce any laws which shall abridge the priveleges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny any person equal protection of the laws.

U.S. Const.XIV,

STATEMENT OF THE CASE

The United States Court of Appeals ccntinues to deny due process in hearing, and petition for rehearing in docket control,this appeal for relief grounded in LAW and FACT in Motion to Rescue denied by the Honorable Thomas A.Higgins, pursuant to 28 U.S.C. 144, on February 21, 19991(App.A P. 2).

The Court of Appeals further denies due process for jury trial for relief in misrepresentation of appearance of disabled PARTY, and repeated scheduled pretrial conferences with abuse of health affirmed by this Court purant to Rule 41(a)Federal Rules of Civil procedure in docket control (App. A p. 2).

This Court of Appeals continues denial of due process and deprivation of civil and constitutional laws and property rights in possessed right, use, to dispose, and exclusion from these basic possed rights in denial of motion to stay mandate for Writ of Certiorari to this Supreme Court, pursuant to 28 U.S.c 2101(App.A).

The Clerk of the Court of Appeals order- the transcript of the proceedings in No 89-6414(1:86-0036 Earlene Polyak v William Boston And Boston Bates & Holt) in denial of Motion to Rescue, Motion for Continuance, the Motion to Transfer Case, and the Dismissal of case by Judge Higgins from the United States District Court, Columbia Division(App. A.p. 7).

Judge Higgins only issued order stating that reasons for denial of timely and proper Motion to Transfer filed on August 3, 1989 stated in the record of the proceedings on September 15, 1989(App. B.p. 15).

The Deputy Clerk of the Court of Appeals denied filing of New Notice of Appeal to Findings of Fact submitted and denied by Judge Higgins on November 9, 1989, and Petition for Rehearing En Banc denied on September 13, 1989 (1:86-0036) (App. A.p. 10).

The Clerk of the District Court alleged that new notice of appeal filed as amended notice but Clerk of Appeals demanded Appellant pay

second one hundred five($105.00), and dismissed appeal as untimely. Appellant's five-part writ for improper handling of case denied on March 19, 1990, No. 89-8505(App. A.p. 9).

Appellant was present for initial scheduled jury trial at the united States District Court, Columbia Division , Nashville, Tennessee on June 20, 1988, but she was subjected without notification, and without consent to unsuspected pre trial conference before a Magistrate (App. A. p. 21).

Appellant's Final Pretrial Order scraped by the Magistrate, but Final Pre trial Order prepared in bias for Defendants by Robert Boston, for his father William Boston, Boston Bates & Holt(App. B.p.21).

Appellant returned invalid Excerpt from proceeding on June 20, 1988, to Court Reporter, but she found a full invalid copy of transcript in the Court of Appeals, Cincinnati, Ohio, of which she was not notified.

Appellant was prepared for jury trial

scheduled at 9:00 A.M on October 11, 1988, but after calling the District Clerks many times, she learned that trial continued by Judge Higgins, while serving in U.S. Court of Appeals in Cincinnati, Ohio.

On June 20 1988, Appellant objected to pretrial conference without her consent and moved to strike it from the record, but she does not find ruling by Judge Higgins in the docket sheet District Court 28 USC 636(c)(1).

On December 19, 1988, Appellant sent a letter to the Clerk, District Court requesting that she be consulted in scheduling due to her health and being subjected to extreme weather during winter, and due to acute bronchitis.

Appellant scheduled(2) times for pretrial conference, and again after letter from Dr. Jeffery Goodman about health on March 3, 1989 (App. B.p.12),but pre trial scheduled again May 1, 1989, and Appellant in the hospital, in Florida,and in Michigan on April 28,1989.

Judge Higgins rescheduled jury trial

on Robert Boston's motion for Tuesday October 17, and pre trial conference scheduled for Friday,September 15,1989(App. B. p. 11).

This order appears to be contain a threat to settle case without jury trial.

The initial complaint was filed in this case on May 12, 1986 in prejudice to the pro se litigant(App.B. p. p. 28).

Judge Higgins set initial pre-trial conference on Robert Boston's motion on July 1 1986, but Appellant already had appointment for examination of back after fall in December 1985, after arriving back in Michigan,

On July 17, 1986, Judge Higgins closed case demanding that Appellant get medical certificate that she was able to attend trial (App. B. p.28).

Judge Higgins has dismissed all complaint and demands for jury trial for relief in companion cases, except one partial hearing,in which the Court issued a directed verdict No. 1:85-0125 Earlene Polyak v Thomas Stack,

And Henry Henry & Stack on May 31, 1988, just two days after release from Cardiac Unit Vanderbilt Hospital in Nashville, Tennessee.

All companion complaints and demands for relief in jury for damages for unconstitutional "taking" of possessed right and interests,use dispose, and exclusion in District Court No 1:84-0082(Frank Hulen and Wilma Lesnansky v Earlene Polyak(Counter-claim) dismissed.

Companion cases Earlene Polyak v Frank Hulen and Wilma Lesnansky No.1:84-0083: Buford Evans & Sons v Earlene Polyak(counter-clain No. 1:85-0120; Earlene Polyak v Jim Hamilton and the Chancery court of Lawrence County, Tennessee No. 1:85-0116 dismissed.

The District Judge denies filing all motions to set aside on NEW EVIDENCE of Rule 60.02Fraud(whether intrinsic or extrinsic)and misrepresentaion by adverse parties in above cases in continuing wrong in exclusion from and deprivation from civil and constituional laws and possessed rights and interests.

REASONS WHY WRIT SHOULD ISSUE

WRIT OF CERTIORARI SHOULD ISSUE FROM THIS SUPREME COURTPURSUANT TO 28 U.S.C 2101 TO REVIEW THE ABUSE OF DIS RETION IN CONFLICT OF INTEREST AND FAILURE TO RESCUE PURSUANT TO 28 USC 144, and RULE 41 FRCIVP,PREJUDICE TO HEALTH PROBLEMS PURSUANT TO FIFTH SEVENTH AND FOURTEENTH AMENDMENTS, AND SET ASIDE ORDER PURSUANT OT RULE 60.02 FRCIVP

1. WRIT SHOULD ISSUE TO REVIEW ABUSE OF DISCRETION IN CONFLICT OF INTEREST AND FAILURE TO RESCUE PURSUANT TO 28 U.S.C. 144.

The Court of Appeals for the Sixth Circuit affirms the District Court's judgment for the reasons stated on the record on September 15, 1989, in misrepresentation of FACTS and LAW in Motion to Rescue in timely and proper Affidavit filed on August 3, 1989 pursuant to 28 U.S.C. 144.

> Whenever A PARTY at any proceeding in a district court makes and files a timely affidavit that a judge before whom a whom a matter is pendinghas a personal bias against him in favor or in favor of party, judge shall proceed no further but another judge shall be assigned to hear proceeding.

The Honorable Thomas Higgins states that the facts set forth in personal bias and prejudice must be accepted as true as set forth pursuant to 28 U.S.C. 144,in lengthy Transcript of the Proceedings on September 28, 1989, prepared by Ms.Virginia K. Wells, Court Reporter filed July 12, 1990.

But the District Court alleges that the timely and proper Affidvit filed on August 3, 1989, over one (1) month prior to scheduled jury trial on Monday, September 16, 1989, fail to set forth facts including time, place, persons, and circumstances(Trans. p.6).

The District Judge alleges in Transcript that trial rescheduled from Monday September 16 to Tuesday, September 17, 1989 on Court practice, but partial trial in directed verdict 1: 85-0125, started on Monday May 31, 1988,This trial date rescheduled on Robert Boston's, son of William Boston, Boston bates & Holt, motion to start on Tuesday 17,1989,to give more time for family gathering in east Tenn-

essee.

In Affidavit, Petitioner believes the Honorable Thomas A. Higgins has a personal bias for counsel for, and above named lawyers" all lawyers, and personal prejudice against pro se litigant "(Trans.p. 2).

On May 31, 1988, Affiant overheard Judge Higgins say"I am a LAWYER, I think in terms of one-third."(person, place, U.D. Court time May31 1988, before bench U.S. District Court, Tenn).

On May 12,1988, Judge Higgins stated in first order after resuming Affiant's cases that "she was guilty" (person, place, time, circumstances-Order,(App. B. p.

"Affiant does not find where the Honorable Thomas A wiseman stated she was"guilty" or any other order, and assumption extra judicial in nature."Affidavit p. 2).

On July 17,1986, Judge Higgins granted one day continuance, but closed case. And that either party could open on good cause"but Affiant would have to have a medical certifi-

cate" (person,time, place circumstances, and order App. B. p.

On September 24,1986, Judge Higgins denied motion to disquaualify in 1:86-0036, in No. 1: 87-0075, and remanded case back to state to sell propertiees on motion submitted by Robert Boston, and Motion for Reconsideration still pending in this 1:86-0036(Trans.June;20; 1988).

On October 28, 1987, the District Judge held status conference while Petitioner in Cardiac unit of Universtiy of Alabama Hospital. Western Union alleges that Telegran received by Clerk on October 27,1987 at 11:00 a,m.

On May 31, 1988, District Judge asked Thomas Stack and Bruce Peden to rise and introduced them as "lawyers to the Court."Judge denied Petitioner's motion to rescue, and started shouting throught the Courtroom, but sometime sent jury out of room.

28 U.S.C. 144, grounded in the belief of A PARTY, and "judge shall proceed no further but another Judge shall be assigned...."

2. THE COURT OF APPEALS MISREPRESENTS ABUSE DISCRETION PURSUANT TO RULE 41(a) FRCIVP, AND SUBJECT PARTY WITHOUT CONSENT RULE 636(c)(1) (2)(1)(b) FRCIVP.

The Court of Appeals misrepresents disabled pro se repeated attempts to comply regarding pre trial conferences, and she was subjected without consent and without notification to pretrial conference on scheduled trial date with witnesses on subpoena on June 20, 1988,"upon consent of all parties"R 636(2) Local Rule 11(2) exempts pro se from pre trial conferences etc U.S Dist. Court, Nashville.

Petitioner was present in Columbia, Tennessee when Thomas Stack stated William Boston "absolutely" refused to reschedule hearing when she was ill, and she became acute in one hundred two (102) degree heat-wave with nationwide warning to heart patients on July 29. 1983, and her property ordered sold at public auction without any compensation.

Petitioner was present at partial hearing on May 31, 1988, two days after release from

Cardiac Unit Vanderbilt Hospital, Nashville, Tennessee, and suffered additional expenses of four days in Motel while the Court interposed naturalization proceedings, sentencing, and even allowed Bruce Peden time to sell another party's property at Public Auction.

Petitioner was present for Buford Evans' & sons wrongful lawsuit when her husband and son drove with her ill with bronchitis in back seat of car to Lawrenceburg, Tennessee on December 26, 1984, from Florida 10000 miles.

The Court continued to schedule pre trial conferences in disregard for Petitioner's health problems and conflict to Magristrate allegation that September bad month in Tenn- (Transcript of Proceedings June 20, 1988), and evidence of that usual rain on September 15, 1989. Petitioner in hospital September 19,1989, and two times in October 1989 in Florida.

The Court affirms abuse of discretion to disabled provided in right of due process in Fifth,Seventh and Fourteenth Amendments.

3. THE COURT OF APPEALS MISREPRESENTS NEGLI- AND MALFEASANCE, AND WRIT SHOULD ISSUE TO SET ASIDE JUDGMENT PURSUANT TO RULE 60.02 FRCIVP.

The court of Appeals misrepresents, and affirms abuse of discretion in denial of due process in issues of negligence and malfeasance as malpractice, which is used in error from the medical profession without any support by the lawyers in Tennessee, in federal U.S. Court.

> A state may not avoid deciding federal question and defeat jurisdiction of the United States Supreme Court by putting forth non-federal grounds of decision which are without any fair substantial support Wolfe v State of N.C. 80 S ct 1482 L Ed 8-(1960).

The issues in 1:86-0036 involves the negligence of William Boston and Boston Bates in protecting possessed constitutional rights and interests, use, to dispose, and exclusion from these rights in failure to protect and provide to the best of their professional ability in equal federal protection of federal and state laws.

The Defendants contracted to provide this equal federal protection pursuant to the

Fifth Seventh and Fourteenth Amendments and Tennessee Statute Partition in Kind 29-27-117.

> If exact partition of property cannot be made without materialinjury to the parties or some one of them, the commissioners may make the partitions as nearly equal as they can and charge the larger Shares with the sums necessary to equalize all shares. TCA 132.

The Defendants have violated their contract with malfeasance when they divided loyalties and served restrainig order from .properties and the United States Department Federal allotment programs.

The burley allotment to this farm has been grown on another farm, but sold on the allotment for this farm in violation of Title 18 Sec. 1001 U.S, Criminal law.

The Co-tenants have transferred federal alloted tobacco without Petitioner's signature of operator and owner pursuant to United States Department of Agriculture Act 1938 Sec 318.She has never given anyone power granted to her æs Administrator in 1976, signature is false.

Thomas Stack found that no dissention existed between the cotenants in Probate Court records, and an abundance of case law to support settlement by agreement initiated by Cotenant, and provided in Tennessee Statute Partition in Kind 29-27-117.

But Boston Bates & Holt kept this estate under their control in probate against this Administrator's suggestions to divide property

In November 1982,Cotenant Wilma Lesnansky asked Petitioner to come from Detroit, to Tennessee to intercede with Cotenant Frank Hulen's repeated visits and consultations with William Boston at his office without all Administrators

This propery is located below General Motor "Saturn Plant", Spring Hill Tennessee, and has a potentional for esclation in value.

On December 19, 1983, Boston Bates & Holt prepared UNAPPEALABLE Judgment on which state case dismissed in further abuse of discretion and state case dismissed without final order April 26, 1984.

The Defendants have excluded Petitioner from her possessed rights and interest, use, to dispose for fifteen (15) years.

Petitioner's possessed rights and interest in properties have been sold without any compensation, notification of place of sale, time of sale, amount of proceeds, where proceeds kept, and without entering order for right of redemption, and right of Appeal FRCIVP.

This Columbia Division of the United States District Court continues deny due process of relief in jury trial to disabled Petitioner, while continuing case during temperate month, but consistently scheduling pretrial conferences.

It is evidenced in final pre trial order threatening Petitioner with additional expenses in notulation of jurors if she did not settle to in bias to Defendants on September 15, 1989.

The Court of Appeals continues to affirm the dismissal of all complaints, and partial

hearing in directed verdict in 1:85-0125, in DOCKET CONTROL.

Petitioner contends that this order be set aside pursuant to Rule 60.02 Fraud(whether intrinsic or extrinsic) and misrepresentation by adverse parties Federal Rules of Civil Procedure.

CONCLUSION

Petitioner prays that an writ of certiorari issue from this Supreme court to review this order to set aside for relief jury trial for damages, and in the alternative, she prays for relief from all damages as set forth in initial complaint and demand for jury trial on May 12, 1986.

On this the 20th day of May, 1991.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364
- and -
4063 Hood Road,
Palm Beach Gardens
Florida
(407) 627-3564

CERTIFICATE OF SERVICE

I certify that a true copy of this petition for writ of certiorari has been mailed to robert Boston 2100 One Commerce Place, Nashville, Tennessee 37239.

Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

_____
NOTARY PUBLIC

My Commission expires:

_____

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit.

Earlene Polyak v William Boston and Boston Bates & Holt 89-6414(D.C.1-86-0036).

Denied:December 13, 1990.

Before: MARVIN AND NELSON, Circuit Judges and Peck Senior Judge.

Petion for Rehearing; Denied March 7, 1991.

Before: MARTIN AND NELSON, Circuit judges and PECK, Senior Judge.

Motion to Stay Mandate for Writ of Certiorari denied: March 8, 1991.

Denied: March 19, 1990, Motion to File Five-part Writ 89-8505.

Before: GUY and BOGGS Circuit Judges and Cohn District Judge.

Denied: Petition for Rehearing En Banc of Motion for Verification of Findings of Facts

Before:MILBURN and NELSON Circuit Judges, and LIVELY Senior Judge on September 13,1990.

The Clerk ordered transcriptSept.,13.1990.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

MARCH 8 1991

v

No 89-6414

WILLIAM BOSTON AND
BOSTON BATES & HOLT

BEFORE: MARTIN and NELSON, Circuit Judges, and PECK Senior Judge.

Upon consideration of the ppellant's motion to stay the mandate in the above cause,

It is ordered that the motion is and it hereby denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK

Plaintiff-Appellant

v

WILLIAM BOSTON AND
BOSTON BATES & HOLT

FILED FEB 21 1991

No. 89-6414

BEFORE: MARTIN AND NELSON, Circuit Judges, and PECK, Senior Circuit Judge.

Earlene Polyak petitions the court to rehear its order of December 13, 1990, affirming the district court's order dismissing her legal malpractice action that was filed pursuant to 28 USC § 1332.

After careful consideration, the panel concludes that it acted under no misapprehension of law or fact in issuing its order Fed R.App. P. 40(a).

Accordingly, it is ordered that the petition for rehearing be and hereby is denied

ENTERED BY ORDER OF THE COURT
Signed Leonard Green

UNITED STATES COURT OF APPEALS
FOR THE SIXTHCIRCUIT

EARLENE POLYAK

FILED DEC13 1990

v

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

BEFORE: MARTIN AND NELSON, CIRCUIT Judges, and PECK Senior Judge.

Earlene Polyak, a pro se Michigan resident appeals the district court's order dismissing her legal malpractice action filed pursuant to 28 USC 1332. The case has been referred to a panel of the court pursuant to Rule 9(a) Rules of the Sixth Circuit.

This case is another in a series of action involving a Tennessee state court suit brought against Polyak by her siblings which resulted in the partition sale of a tract of land and a dwelling which they inherited as tenants in common from their parents. Polyak sought damage and injunctive relief from William Boston and his law firm Boston Bates & Holt, alleging that

Boston committed malpractice by representing her siblings in the partition suit. Specifically, that Boston divided his loyalties when he chose to reperesent her siblings against her, becaue he had previously represented her and her siblings in probating the property (from January 1976 to July 29, 1983 emphaisis added for clarification).

Susbequent to filing of Polyak's complaint on July 1, 1986,(complaint filed on May 12, 1986, notice of appeal filed November 11,1989, emphasis for clarification of dates),the district courtscheduled first pre trial conference on(first pretrial conference held on date scheduled for jury trialon June 20, 1988 emphasis for claification) on seven ocasions in an attempt to clarify the issues prior to trial. The first six attempts to hold such conference were continued because Polyak claimed her health would not permit her to attend. After Polyak failed to attend the ninth scheduled conference the district court dismissed her

action pursuant to Rule 41(b). During this period, Polyak filed a motion to rescue, (pursuant to 28 USC 144, clarification) which was denied. Polyak filed a timely appeal, challenging both dismissal of her suit and the denial of motion to rescue. In addition, she has filed a motion for relief seeking return of her filing fee and other expenses on appeal.

Upon review, we affirm the district court judgment for the reasons stated on the record on September 15, 1989, as adopted by the district court's orders dated September 15, 1989.

The district court properly denied Polyak motion to rescue because it did not satisfy the requirements necessary for the disqualification of a federal judge pursuant to 28USC 144;455(a). See. EAsley v Uof M Bd of Education, 853 F2d 1351, 1355-56(4th Cir 1989). Browing v Foltz, 837 F 2d 276 279(6th Cir(1988) 488 US 1018 F 2d 276(6th Cir 1988), 488 Us 1018(1889).

Further, the district court did not abuse its discretion in dismissing Polyak's action pur suant to Fed R. Civ P. 41(b)based upon her failure to comply with the court's orders regarding pretrial conferences. See. Link VWasbash Railroad Co, 370 US 626 633(1962);Coston v DEtroit Edisio, 789 F 2d 377(6th Cir. 1986)

Accordingly, the motion for relief is hereby denied and the district court's judgment if Affirmed Rule 9(b)(5) Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green

ISSUED AS MANDATE MARCH 1991.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EARLENE POLYAK FILED SEPT 13 1989

v No. 89-6414

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

This pro se plaintiff appeals the district court's denial of her motion to rescue and the dismissal of her negligence action filed pursuant to 28 U.S.C. 1332.

Upon review, this court certifies that the transcript of the proceeding of the pretrial conference is needed to determine the grounds for the district court's denial of the motion to rescue and the dismissal of this action. It is further certified, soley for the purpose of U.S.C. 753(f) that the appeal is not frivilous.

Accordingly, the official court reporter for the Middle district of Tennessee at Nashville is directed to prepare the transcript of the pretrial conference conducted

before Judge Higgins in September 15, 1989 in Civil Action No 1-86-0036. The Transcript shall be sent to this Court within thirty days after filing this order.

Signed Leonard Green, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RE: EARLENE POLYAK FILED MAR 19 1990
89-8505

BEFORE: GUY and BOGGS CIRCUIT Judges .and COHN District Judge. Nos.89-6414/90-5015 HigginsD.C.

The petitioner a pro se litigant who has pursued several appeals and original actions in regard to her legal challenge to a Tennesse state judgment, has submitted and application for five-part writ, wherein she challenges the Clerk's office has improperly handled five appeals and one mandamus action.She specifically asserts the Clerk's Office has erroneously rejected motions for rehearinq Nos. 89-5320/5596 as untimely filed, improperly ruled she must file separate dpcket fees Nos.89-6414 and 90-5015(D.C 1:86-0036)and failed to transmit all papers in No.89-6514. She seeks relief (1)preventing dismissal in appeal no. 89-6414 and 90-5015 and new briefing schedule.(2) recall mandates Nos.89-5329/5496/5649(3) resubmission of mandamus petition no. 89-6514.

Signed Leonard Green Clerk

UNITED STATES DISTRICTCOURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED OCT 31 1989
1:86-0036
JUDGE HIGGINS

v

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

This action, set for jury trial on Monday is reset for Tuesday, October 17,1989, at 9:00a.m. at Nashville,

The pretrial conference scheduled for Friday, September 15, 1989. at 9:00 a.m. shall likewise be held at Nashville.

If this action is tobe settled, the court shall be notified by noon, Friday October 11, 1989. If a settlement is reached therinafter resulting in notulazation of jur .. the costs of the summoning jur may be taxed to the parties dependent upon the c rcumstances.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FILED MAR 3 1989

TO WHOM IT MAY CONCERN

RE: EARLENE POLYAK, 4063 Hood Road,
Palm Beach Gardens, Florida 33410

Please be advised that the above named individual is under my care currently for angina and a persistent influza type illiness. I feel it would be determental to her condition to Travel to Tennessee in March. If her condition could be rescheduled in late April, it would be appreciated.

Sincerely,

Signed Dr. Jeffery Goodman.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK — FILED Nov 1 1989

v — No. 1:86-0036
JUDGE HIGGINS

WILLIAM BOSTON AND
BOSTON BATES & HOLT

NOTICE OF APPEAL

Plaintiff gives notice of appeal to the abuse of discretion in conflict of interest and failure to rescue in dismissal of the above case by the Honorable Thomas A Higgins on September 15, 1989, to the united States Court of Appeals, and denial of petition for rehearing en banc on motion for continuance and pretrial conference and transfer of case.

Plaintiff is denied federal protection of equal protection under Tennessee Statute Partition in Kind 29-17 119, in the sale of her properties in Lawrence County without jury trial, any compensation, and without appeal ever being heard in any Court. She is denied due process and deprived of civil and constitutional laws and property rights, pursuant to

28 USC 1443;42 USC 1981,1982 and 1983; and the Fifth Seventh and Fourteenth Amendments.

Appeal is taken under Rule 60.02(Fraud (whether intrinsic or extrinsic) and misrepresentation by adverse parties) in which misrepresentation of state case as complete case(final order) used for invalid lein to sell Plaintiff's "interest therein" property and UNAPPEALABVLE JUDGMENT (December 20, 1983, Lawrence County Chancery Court).

On the 27th day of October, 1989.

Respectfully submitted,

Earlene polyak
4063 HooD Road
Palm Beach Gardens
Florida 33410
(407) 627-3564

Certificate of Service

I certify that a true copy of this pleading has been mailed to Robert Boston, 2100 One Commerce Place, Nashville, Tennessee 37239.

Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK FILED SEPT 15, 1989

V No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

Plaintiff's motion to rescue(filed August 3, 1989,Docket Entry No.134I is denied for the reasons stated on the record at the hearing on September 15, 1989.

It is so ordered.

Signed Thomas A Higgins

UNITED STATES DISTRICT COURT
MIDDDLE DDISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK FILED SEPT 89

v No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

Plaintiff's motion to continue pretrial conference is denied and trial scheduled for October 17, 1989 is dismissed with prejudice.

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED NOV 9 1989

V

1:86-0036
JUDGE HIGGINS

WILLIAM BOSTON AND
BATES & HOLT

NEW NOTICE OF APPEAL

Plaintiff gives notice of appeal to the abuse of discretion in conflict of interest and failure to rescue by the Honorable Thomas A. Higgins in the dismissal of above styled case, and dismissal of motion for continuance and transfer of case, and dismissal of case at second pretrial conference on September 15,1989 and to denial of motion for verification of findings of fact in petition for rehearing en banc on November 11, 1989($105.00 fee nov 1/89.

Plaintiff appeals the denial of federal protection of equal protection provided Tennessee statute Partition in Kind 29-27-117, in sale without jury trial abd compensation

Earlene Polyak, 4063 Hood road,palm Bch,Fla
Copy mailed to R. Boston, Nashville, Tenn.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

v

WILLIAM BOSTON AND
BOSTON BATES & HOLT

FILED NOV 9 1989
1:86-0036
JUDGE HIGGINS

ORDER

In accordance with the memorandum entered it is hereby ordered that Plaintiff's Motion to File Fax Letter and Plaintiff's Motion for Verification of Findings of Facts is in Denial of Rehearing En Banc are denied.

Signed Thomas A Higgins.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

Plaintiff

FILED JUN 22 88

v

No. 1:86-0036
JUDGE HIGGINS
(By reference to the NHon Kent Sandridge U.S. magristate)

WILLIAM BOSTON AND
BOSTON BATES & HOLT

FINAL TRIAL ORDER

This cause came on to be heard on June 20, 1988. at 9:00 a.m. before the Hon. Kent Sandridge, United States Magristrate, by conference in accordance with the order entered by the Court on June 17, 1988, and for the purposes stated therein, and the following constitutes the Final Pretrial order of the Court.

Pleading

The pleading set forth in relation to this action deemed amended to conform to thus Pre-Trial Order.In all relevant regards, this final pretrial order supplemants the previous order.

Theories

Plaintiff submitted the following state-

ment of her theory against defendants:

Plaintiff contends that Defendants William Boston, Boston Bates & Holt were negilent in care and professional skill in representing her best interest and they are liable for damages.

Plaintiff contends that Defendants negligent in representation of her rights and personal properties in the division of loyalties to take estate in complaint against Earlene Polyak for Wilma Lesnansky and Frank Hulen and for their profit.

And as a direct and proximate result of their negligence in the care and professional skills in protecting her best interests, Plaintiff has been deprived of civil and constutional rights and laws, suffered emotional stresses on damaged heart; suffered humiliation and embrassement; loss of the ordinary pleasures of like in time and work on appeals and suffers irreparable damage in the loss of real and personal properties, and loss of a

right to never be regained in retirement home

Defendants submitted theory:

Defendants perceive that Plaintiff is suing them for alleged negligent legal malpractice stemming from Defendants "care and professional skill representing her best interests (Plaintiff's theory) even though defendant's legal representation was of Frank Hulen and Wilma Lesnansky in state court land partition suit against Plaintiff.

Upon discussion, the only issues to be tried in this litigation are the following:

(1) Whether the Defendants were Plaintiff attorney in connection with land partition suit (Defendant's represented the family since 1976 to 1983), prior to their lawsuit to sell jointely owned property.

(2) Whether Defendant's were negligent in manner they handled said suit.

(a) In holding an order in said action for specified time(July 29, 1983 to October 19

1983 over four (4) months, emphasis added).

(b) In preparing an unappealable judgment in said action(Case dismissed in state court on unappealable judgment., emphasis added)

2. What damages are recoverableby plaintiff assuming the burden of proof is carried.

Pending Motions

...Plaintiff's motion to serve Summons and Complaint against Frank Hulen and Wilma Lesnansky;Plaintiff's motion to join claims (Earlene Polyak v Frank Hulen and Wilma Lesnasky 1:84-0083)Plaintiff's motion to enter amended order;Plaintiff's motion to to correct order(May 12, 1986)Plaintiff's motion to compel to Produce documents and records.

...Plaintiff's Motion for Reconsideration of the Court's Prior Denial of Plaintiff's Motion to Disqualify the Hon. Thomas A Higgins from this case filed on September 27, 1987.

Exhibits

The parties have marked their proposed trial exhibits Plaintiff 1-23, Defendant 1-23.

Trial Date

This matter is set for six person jury trial to commence on October 11,1988 at 9:00 a.m.

So ordered and entered on JUN 22 1988.

Signed Kent Sandidage,Magistrate

APPROVED FOR ENTRY:

Signed Robert boston
WALLER LANSDEN DORTCH & DAVIE
2100 One commerce Place
Nashville, Tennessee 37239

ATTORNEYS FOR THE DEFENDANTS

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED JUL 17 1986

v

No. 1:86-0036

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

The plaintiff's motion (filed July 1,1986) to continue the initial pre trial conference scheduled for July 1, 1986 was granted.

The motion for continuance was based upon the plaintiff's claim that her health would not permit her to appear because of seasonal heat. The motion was supported by plaintiff's affidavit.

All further proceedings in this action are stayed until such time ASplaintiff's health will permit her to appear in court and attend to this litigation prosecuted by pro se.

The court has determined that an initial conference is absolutely necessary litigation.

Accordingly, the Clerk is directed to

close case administratively to be re-opened upon motion,and the showing of good cause, by either party. However, any motion by the Plaintiff to reinstate this action on the active docket shall be supported by a medical certificate establishing plaintiff's physical ability to appear in court and participate in this litigation.

The Court has received correspondance and telegram telegrams from the Plaintiff addressed directly to the undersigned. The plaintiff is directed to address all pleadings and communications to the Clerk.

The Clerk is directed not to accept for filing any document that does not bear the caption and document number of an action in this court.

The clerk is directed to file, as a part of the record in this case, a telegram received by the Court on July 1, 1986,

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK — FILED MAY 12 1986

v — 1:86-0036
JUDGE HIGGINS

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

On March 2, 1986, Earlene polyak tendered complaint to the Clerk for filing, along with required filing fee. Earlene Polyak v William Boston boston Bates & Holt.

The complaint alleges that the defendants have violated the plaintiff's civil rights and re guilty of legal malpractice arising out of the partition sale of certain property in Lawrence County, Tennessee, Jurisdiction is invoked on the basis of federal question and diversity of citizenship and the required amount in controversy.

Earlene polyak has filed a number of prev ious actions in this court related to partition sale of certain property in Lawrence County, Tenn

essee. For the reasons stated in a memorandum filed on November 13, 1985, and an order entered the same date in civil action No.1:85-0116(Earlene Polyak v Jim Hamilton, individually and in his judicial capacity as Circuit Judge et al., Judge Wiseman found that Earlene Polyak was guilty of abusing the process of this court and enjoined her from filing any further actions in this court regarding the partition sale of property in Lawrence, County without the express permission of court

After carefully examining the tendered complaint, the court finds that it does not appear to seek to interfere with the partition sale or set it aside. Accordingly, the court concludes that the tendered complaint does not come within the scope of the injunction issued by Judge Wiesman.

The Clerk is directed to file the complaint and issue process.

Signed Thomas A. Higgins.

APPENDIX C

CIRCUIT COURT OF LAWRENCE COUNTY,TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

FILED APRIL 19, 1983

Plaintiff

No.1974

v

EARLENE POLYAK

JUDGMENT

Thiscause came on to be heard on this the 19th day of December 1983, before the Honorable Jim T. Hamilton, Judge,upon the motion this day filed by the Defendant, personaly on her behalf, state and argument of the Defendant, from all which the Court finds there to be no merit, and said motion is here and now overruled.

This 19th day of December, 1983.

Signed Jim T. Hamilton

The under certifies that a true copy of this pleading addressed to said counsel at his pffice.

Signed Charles Holt, Boston Bates & Holt.